

This SECOND AMENDED AND RESTATED AGREEMENT FOR OPERATION, MAINTENANCE, AND MANAGEMENT OF THE HARBOR BAY FERRY TERMINAL (hereinafter "Second Amended Terminal Management Agreement") effective as of _____, 2011, is entered into by and between the CITY OF ALAMEDA, a California Municipal Corporation (hereinafter "City"), and the Harbor Bay Business Park Association, a California non-profit mutual benefit corporation (hereinafter "HBBPA").

RECITALS

This Second Amended Terminal Management Agreement is entered into by the parties based on the following facts, understandings, and circumstances:

- A. HBBPA is a California non-profit mutual benefit corporation whose members are the owners of lots and parcels of real property in the Harbor Bay Business Park in Alameda, California. Most of the lots in the Harbor Bay Business Park are currently improved with buildings occupied by companies that have employees and business visitors.
- B. HBBPA provides various operations, maintenance and property management services for the Harbor Bay Business Park in Alameda such as landscape maintenance and security patrols and other operational management services for properties within and near the Harbor Bay Business Park, including public areas. HBBPA also has a contract with the City's Island City Landscape Lighting and Maintenance District 84-2 ("LLMD") for maintenance and management of certain defined areas within the LLMD Zone within and near the Harbor Bay Business Park.
- C. City as Grantee under that certain Grant of Easement and Assignment of Permits and Enabling Agreements for Public Marine Transportation Terminal Facility dated December 28, 1990 and recorded on February 25, 1991 (hereinafter "Grant of Easement") has the right to construct, maintain and operate a Public

Marine Transportation Terminal Facility over, under, across, and along those certain parcels and strips of land situated in the City of Alameda, County of Alameda, State of California, as more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. In 1991, City used public funds obtained from bonds issued by the Harbor Bay Business Park Assessment District 84-4 levied on lots and parcels in the Harbor Bay Business Park to construct a Public Marine Transportation Facility at such location (hereinafter "Harbor Bay Ferry Terminal").

- D. In 1990, the City and HBBPA entered into that certain Agreement for Operation, Maintenance, and Management of Public Marine Transportation Terminal Facility dated December 28, 1990 ("Original Terminal Management Agreement") under which HBBPA agreed to perform certain operational, maintenance and management services for the City at the Harbor Bay Ferry Terminal in anticipation that regularly scheduled commuter ferry service would shortly thereafter be provided to and from the Harbor Bay Ferry Terminal. Said service is referred to hereunder as the "Alameda Harbor Bay Ferry Service." HBBPA entered into the Original Terminal Management Agreement for the purpose of achieving a level of maintenance and management that would insure that the Harbor Bay Ferry Terminal at the western end of the Harbor Bay Business Park and the facilities located therein would continue to be attractive in appearance in order to support the value of the properties owned by its members and would provide convenient access to and promote the use of the Alameda Harbor Bay Ferry Service by the employees and business visitors of companies located in the Harbor Bay Business Park. The term of the Original Terminal Management Agreement extended from the completion of construction of the Harbor Bay Ferry Terminal until the passage of the first three (3) years of operation of the Alameda Harbor Bay Ferry Service.

- E. Upon completion of the construction of the Harbor Bay Ferry Terminal on approximately July 1, 1991, HBBPA commenced operation, management, and maintenance of the Harbor Bay Ferry Terminal on behalf of the City, and has been performing such services on an ongoing continuous basis until the present.
- F. On July 1, 1991, HBBPA entered into a License Agreement with Harbor Bay Maritime, Inc. ("HBM"), which among other matters set certain terms and conditions whereby HBM was authorized to dock passenger ferry vessels at the Harbor Bay Ferry Terminal. This License Agreement is referred to hereinafter as the "Original License Agreement."
- G. On March 30, 1992, HBM commenced regularly scheduled commuter ferry service for the Alameda Harbor Bay Ferry Service to and from the Harbor Bay Ferry Terminal and has been providing such service on an ongoing continuous basis ever since. Thus the term of the Original Terminal Management Agreement extended until the passage of three (3) years of HBM's operation of the Alameda Harbor Bay Ferry Service, namely until March 29, 1995.
- H. On July 7, 1993, the City and HBM entered into that certain Lease, Management, and Operating Agreement ("Original Vessel Operating Agreement") which provided in part that in return for City's purchase of a new ferry vessel for the Alameda Harbor Bay Ferry Service utilizing Proposition 116 funds and Harbor Bay Improvement Funds ("TIF"), HBM agreed to operate the Alameda Harbor Bay Ferry Service until at least September 30, 1997. HBM and the City have since amended the Original Vessel Operating Agreement from time to time, and HBM currently operates the Alameda Harbor Bay Ferry Service with public subsidies under the Eighth Amendment to Sixth Amended and Restated Operating Agreement for the Alameda Harbor Bay Ferry Service effective as of July 1, 2010 and extending to June 30, 2011.

- I. HBBPA continued to operate, maintain, and manage the Harbor Bay Ferry Terminal beyond March 29, 1995 on a month-to-month basis without a formal written extension or amendment or replacement of the Original Terminal Management Agreement.
- J. In 2001, HBBPA replaced the Original License Agreement with HBM with a Docking License Agreement effective as of November 1, 2001 (the “2001 Docking License Agreement”), the term of which shall extend for so long as HBM operates the Alameda Harbor Bay Ferry Service with passengers landing and boarding at the Harbor Bay Ferry Terminal, unless earlier terminated as provided in the 2001 Docking License Agreement. The 2001 Docking License Agreement provided that HBM would pay a monthly License Fee for the right to use the docking facilities at the Harbor Bay Ferry Terminal, would perform minor maintenance tasks and/or repairs of the marine-based facilities (i.e., the floating barge/dock and the gangway) or assist with inspection or supervision of work performed on the marine-based facilities by outside contractors, would comply with the requirements of certain conditions in City Council Resolution No. 12014 dated September 4, 1990 applicable to the ferry service operator, would comply with certain rules and regulations established by HBBPA for use of the Harbor Bay Ferry Terminal in order to fulfill some of the general conditions of City Council Resolution No. 12014, would cooperate with HBBPA’s maintenance and security program for the Harbor Bay Ferry Terminal, would make periodic self-monitoring reports on environmental and traffic impact mitigation measures, and would comply with updated insurance and indemnification requirements.
- K. In 2004, the City and HBBPA entered into that certain First Amended and Restated Agreement for Operation, Maintenance and Management of Public Marine Transportation Terminal Facility effective May 5, 2004 (“First Amended Terminal Management Agreement”) to update the provisions of the Original Terminal Management Agreement and to clarify the obligations of HBBPA going

forward in operating, maintaining and managing the Harbor Bay Ferry Terminal. The principal changes from the Original Terminal Management Agreement that were contained in the First Amended Terminal Management Agreement were the following:

- a. Acknowledgment that after three years of Annual Monitoring Reports filed by HBBPA with the City with respect to environmental mitigation measures set as conditions of project approval by the City Council in 1990 in Resolution No. 12014, on November 13, 1995, the City's Planning Board suspended the requirement of obtaining or preparing and filing monitoring reports on most items.
- b. Recognition that on January 25, 1999, the City's Planning Board approved a Planned Development application which included a request to remove the vehicle restricting gates at the Mecartney Road entrance/exit of the Harbor Bay Ferry Terminal, and as a result HBBPA should no longer have the responsibility of maintaining such gates and issuing electronic cards for Bay Farm Island residents.
- c. Provisions to distinguish and clarify the specific duties of HBBPA as manager of the Harbor Bay Ferry Terminal and as contractor for the City's Island City Landscape Lighting and Maintenance District ("LLMD") and the separate responsibilities of HBM as the operator of the Alameda Harbor Bay Ferry Service and of Harbor Bay Isle Associates ("HBIA") as the Grantor under the Grant of Easement and as the master developer of the Harbor Bay Business Park.
- d. Changed the fiscal year from the calendar year to a July 1 --- June 30 fiscal year to match the City's budgetary process.
- e. Updated some details of management based on the experience that HBBPA had gained in managing the Harbor Bay Ferry Terminal since July 1, 1991.

- L. The City and HBBPA now recognize that some of the operational and management obligations of HBBPA specified in the First Amended Terminal Management Agreement need to be updated, revised or deleted so that the Harbor Bay Ferry Terminal will be efficiently and effectively managed by HBBPA on behalf of the City going forward. The parties also desire to update the identification of standards to be met in the quality and resulting appearance of maintenance and repair work at the Harbor Bay Business Park and to appropriately revise and update the Exhibits to the First Amended Terminal Management Agreement that specify Rules and Regulations for the Harbor Bay Ferry Terminal and certain responsibilities of HBBPA under City permit approvals for the Harbor Bay Business Park. Further, the anticipated transfer of certain ferry service operations from the City to the San Francisco Bay Area Water Emergency Transportation Authority ("WETA") will result in some new arrangements for operation, maintenance and management of the Harbor Bay Ferry Terminal after such a transfer, including an anticipated updating amendment of the 2001 Docking License Agreement.

NOW, THEREFORE, IT IS HEREBY AGREED by and between the City and HBBPA that the First Amended Terminal Management Agreement is further amended and restated in this Second Amended Terminal Management Agreement to hereinafter read as follows:

1. **Services to be Performed.**

- a. **Maintenance of Land-Based Facilities.** HBBPA shall furnish with its own forces and resources or by sub-contracts all labor, materials and equipment necessary to maintain the following land-based facilities at the Harbor Bay Ferry Terminal: (1) the parking lot's surfaces, landscaping, lighting, and signage; (2) the Harbor Bay Ferry Terminal shelter, bike racks, signage, lighting and trash containers; (3) the restrooms and trash containers at the Harbor Bay Ferry Terminal, and (4) the walkways and pathways running through the Terminal area. Such maintenance services

include, without limitation, sweeping and cleaning the parking lot and pathways, emptying the trash containers, maintaining the landscaping, cleaning the restrooms and furnishing them with supplies, cleaning the Terminal shelter, cleaning graffiti from the restrooms and Terminal shelter, changing flags as needed, replacing lights as needed, and replacing signage as needed.

- b. **Maintenance of Water-Based Facilities.** HBBPA shall perform limited maintenance services on the water-based facilities at the Harbor Bay Ferry Terminal, namely power washing the passenger ramp and floating dock on a weekly basis, and applying non-skid paint to the passenger gangway once per year. HBBPA's obligations to perform such limited maintenance services on the water-based facilities hereunder may be terminated by delivery of written notification of such termination from the City.
- c. **Repair Services.** Subject to availability of funding from the City or from the Island City Landscape and Lighting Maintenance District 84-2 which is managed by the City, HBBPA shall repair damages to the land-based facilities listed in Paragraph 1.A. above with its own forces or by subcontracts. HBBPA shall not have any obligation hereunder to repair any damages to the water-based facilities at the Harbor Bay Ferry Terminal.
- d. **Property Management Services.** HBBPA shall provide property management of the land-based facilities, i.e., the parking and passenger staging areas at the Harbor Bay Ferry Terminal, and of the limited maintenance services on the water-based facilities set forth herein in accordance with the Rules and Regulations attached hereto as Revised Exhibit "B," the Scope and Specifications of Work attached hereto as Revised Exhibit "C," and the applicable items specified in Revised Exhibit "D" attached hereto.

- e. **Pollutant Spills Monitoring and Response Actions.** HBBPA shall check the Harbor Bay Ferry Terminal parking lot periodically for motor fuel or oil spills or other pollutant spills and perform appropriate remedial response actions as needed, including filing reports with the City on any incident and the response actions taken.
- f. **Security Patrols.** HBBPA shall arrange for its security services contractor to patrol through the Harbor Bay Ferry Terminal parking lot and past the Terminal shelter as needed, but not less than one time per eight-hour shift. Any vehicle break-ins or results of acts of vandalism observed by the security patrols shall be reported to the Alameda Police Department.
- g. **Fund Management and Accounting Services.** Upon receipt from City of a schedule of Desired Maintenance Services for the Harbor Bay Ferry Terminal for the next fiscal year, HBBPA shall develop and deliver to the City by each April 1st a draft budget for the costs of the above-described general required services plus the Desired Maintenance Services for the Harbor Bay Ferry Terminal for each fiscal year commencing July 1st (hereinafter "Annual Operating Budget") so that a final Annual Operating Budget can be approved in writing by City prior to commencement of the fiscal year. HBBPA shall use funds received from the City pursuant to paragraph 4 below to make disbursements for costs of the maintenance, repair, and management services performed by HBBPA or its sub-contractors for the Harbor Bay Ferry Terminal in accordance with the approved Annual Operating Budget. HBBPA shall maintain financial records for the funds received and disbursements made for the Harbor Bay Ferry Terminal and provide City with an annual report thereof within thirty (30) days of the end of each fiscal year and with an interim progress report on year-to-date income and expenses with sufficient lead time to assist City in finalizing the next Annual Operating Budget prior to commencement of the fiscal year.

- h. **Authorization to Perform Services.** City hereby agrees that HBBPA shall have the rights and authorization necessary to perform the above services on behalf of City with respect to the Harbor Bay Ferry Terminal. HBBPA is hereby authorized to use outside contractors to perform portions of such services as appropriate, provided that HBBPA shall be solely responsible for their supervision and payment, that all said contractors doing work within the City of Alameda shall be licensed to do business within the City limits, and that said contractors shall be required by HBBPA to provide City with appropriate insurance coverages pursuant to paragraph 11 herein and to comply with all other applicable provisions of this Second Amended Terminal Management Agreement.
2. **Term.** Subject to and upon the terms and conditions set forth herein, this Second Amended Terminal Management Agreement shall commence as of the effective date hereof and shall continue in force and effect for as long as the Harbor Bay Ferry Terminal is used as a public ferry terminal for the Alameda Harbor Bay Ferry Service, unless earlier terminated pursuant to Section 3 hereof.
3. **Termination.** Neither party may terminate this Second Amended Terminal Management Agreement prior to the end of the term hereof unless the other party defaults in its performance required hereunder and fails to cure said default within thirty (30) days after delivery of written notice of said default. Upon termination, the obligations of City and HBBPA shall cease as of thirty (30) days after the other's receipt of written notice of termination, except that the indemnification provisions hereof shall survive the termination of this Second Amended Terminal Management Agreement.
4. **Compensation.** In consideration of the full and faithful performance of the covenants and agreements on the part of HBBPA to be kept and performed and of the satisfactory performance and completion of the work contemplated and

embraced in this Second Amended Terminal Management Agreement, HBBPA shall receive compensation on a monthly basis as provided in the approved Annual Operating Budget, plus reimbursement for all costs incurred in accordance with the approved Annual Operating Budget or any mutually approved amendment thereof.

City and HBBPA shall include within the Annual Operating Budget a reasonable contingency amount for non-routine repair of any parts of the land-based facilities that involve dangerous conditions posing safety risks for the public so that the dangerous conditions can be promptly remedied, removed and replaced. If the costs of work performed on such non-routine repairs during a Fiscal Year substantially deplete the funds budgeted for non-routine repairs in the Annual Operating Budget, then non-urgent repair or replacement projects shall be postponed or suspended until the next Fiscal Year so that funding remains available within the Fiscal Year for non-routine repairs that address dangerous conditions posing safety risks for the public. For non-routine repairs costing in excess of Two Thousand Dollars (\$2,000.00), HBBPA shall proceed with the work only upon prior authorization by the City, which authorization shall not be unreasonably withheld or delayed.

If it should appear that sufficient funds are not available in designated funds in the Annual Operating Budget to compensate HBBPA for its services hereunder and to pay the expenses of maintenance, repair and management of the Harbor Bay Ferry Terminal as provided herein, City shall make reasonably prompt efforts to make sufficient funds available from available sources, which may include the LLMD or the Harbor Bay Transportation Improvement Fund (the "TIF"), provided that City shall not be required to advance funds from the City's General Fund.

5. **Designated Representatives and Notices of Potentially Dangerous Conditions.** City and HBBPA shall each notify the other in writing of the name of the person with current contact information who will be principally responsible for coordination of services performed at the Harbor Bay Ferry Terminal hereunder,

including coordination with a designated representative of the then-current Operator of the Alameda Harbor Bay Ferry Service. For such notices to City, the designated representative is City Engineer Barbara Hawkins, at City of Alameda – City Hall West, 950 West Mall Square, Suite 110, Alameda, CA 94501, telephone: (510) 749-5863, email: bhawkins@ci.alameda.ca.us, or her designee; and the designated representative of HBBPA is Property Manager Marcy Marks c/o GS Management Company, 5674 Sonoma Drive, Pleasanton, CA 94566, telephone: (925) 468-1611, email: mmarks@gsmanagement.com, or her designee. The parties may change their respective designated person(s) or their contact information by delivery of written notice thereof to the designated representative(s) of the other party.

If employees or contractors of either City or HBBPA become aware of any potential dangerous conditions that pose safety risks to the public within the land-based facilities at the Harbor Bay Ferry Terminal, including, without limitation, pathways or asphalt paved areas with cracks or irregularities in their surfaces which pose risks to the public of tripping or falling, whether as a result of inspections, complaints from the public regarding such conditions, or claims of accidents resulting from such conditions, then notice of such dangerous conditions shall be promptly conveyed to the designated representatives of both the City and HBBPA so that corrective work can be promptly mobilized and implemented.

6. **Guarantees and Warranties.** HBBPA warrants that all work performed under this Second Amended Terminal Management Agreement shall be performed in a professional and workmanlike manner commensurate with industry standards in the community and that all services shall be performed by experienced and qualified personnel who are not employed by the City. In performing the agreed-upon services hereunder, HBBPA in no way warrants or guarantees that the Harbor Bay Ferry Terminal will be free from vandalism, litter, or pollutant spills or that the land-based transportation activities expected for the Harbor Bay Ferry

Terminal will occur without coordination problems or difficulties. HBBPA, however, agrees to use its best efforts to prevent such difficulties.

7. **Indemnification.** HBBPA shall indemnify and hold harmless City, its City Council, boards and commissions, officers and employees and, effective upon a transfer of City's operation of the Alameda Harbor Bay Ferry Service from City to WETA, also WETA, its directors, officers and employees ("Indemnitees" herein) from and against any and all loss, damages, liability, claims, suits, costs and expenses whatsoever, including reasonable attorneys' fees, arising from or in any manner connected to HBBPA's negligent performance of services or work performed pursuant to this Second Amended Terminal Management Agreement. HBBPA shall indemnify and hold harmless Indemnities from and against any and all loss, damages, liability, claims, suits, costs and expenses whatsoever, including reasonable attorneys' fees, accruing or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, equipment or supplies arising from or in any manner connected to HBBPA's negligent performance of services or work performed pursuant to this Second Amended Terminal Management Agreement.

HBBPA shall require its contractors and subcontractors to similarly indemnify and hold harmless Indemnities from and against any and all loss, damages, liability, claims, suits, costs and expenses whatsoever, including reasonable attorneys' fees, accruing or arising from or in any manner connected to said contractors' or subcontractors' negligent performance of services or work performed pursuant to this Second Amended Terminal Management Agreement.

However, HBBPA shall not be obligated to indemnify Indemnitees from any loss, damages, liability, claims, suits, costs and expenses whatsoever, including reasonable attorneys' fees, arising from the sole or active negligence or willful misconduct of the Indemnities.

8. **Independent Contractor.** City and HBBPA intend that the relationship between them created by this Second Amended Terminal Management Agreement is that of employer – independent contractor. HBBPA, including its employees and/or

subcontractors, in performing maintenance, repair and property management services hereunder, is an independent contractor, and under no conditions are persons doing work hereunder to be considered as employees of City. The manner and means of conducting the work are under the control of HBBPA, except to the extent that they are limited by statute, rule or regulation and the express terms of this Second Amended Terminal Management Agreement. No civil service status or other right of employment will be acquired by virtue of HBBPA's services. None of the benefits provided by City to its employees, including but not limited to unemployment insurance, workers' compensation plans, vacation and sick leave, are available from City to HBBPA, its employees or agents. Deductions shall not be made for any state or federal taxes, FICA payments, PERS payments, or other purposes normally associated with an employer-employee relationship from any fees due HBBPA. Payments of the above items, if required, are the responsibility of HBBPA, and HBBPA shall indemnify and hold City harmless from and against any loss, damage, liability, costs or expenses arising therefrom.

9. **IRCA.** HBBPA assumes full responsibility for verifying the identity and employment authorization of all of its employees, if any, performing work hereunder in compliance with the Immigration Reform and Control Act of 1986 and rules and regulations promulgated in connection therewith (hereinafter "IRCA"). HBBPA shall indemnify and hold City harmless from and against any loss, damage, liability, costs or expenses arising from any noncompliance of HBBPA with the provisions of IRCA.
10. **Assignment.** HBBPA shall not assign, hypothecate, or transfer this Second Amended Terminal Management Agreement or any interest therein directly or indirectly, by operation of law or otherwise, without the prior written consent of City, which consent shall not be unreasonably withheld. Any attempt to assign, hypothecate, or transfer this Second Amended Terminal Management Agreement or any interest therein without City's consent shall be null and void,

and any assignee, hypothecate or transferee shall acquire no right or interest therein by reason of such attempted assignment, hypothecation or transfer. Any expenses incurred by City in reviewing the documentation of a proposed assignment, hypothecation, or transfer hereunder shall be reimbursed to City by the respective assignee, hypothecate, or transferee.

11. **Insurance.**

- a. Coverage to be Maintained by HBBPA as Insured. HBBPA shall maintain the following insurance coverages at all times during the term of this Second Amended Terminal Management Agreement with an insurance company that is acceptable to City and licensed to do insurance business in the State of California:
 - i. Workers' Compensation and Employers' Liability Insurance: HBBPA shall procure and maintain during the life of this Second Amended Terminal Management Agreement insurance policies for workers' compensation to statutory limits and employer's liability coverage of One Million Dollars (\$1,000,000.00).
 - ii. Commercial General Liability Insurance: HBBPA shall procure and maintain during the life of this Second Amended Terminal Management Agreement a policy or policies of Comprehensive General Liability ("CGL") insurance for bodily injury and property damage liability, covering all of the land areas at the Harbor Bay Ferry Terminal (including the parking lot and the shelter) and the operations of HBBPA and HBBPA's employees performing maintenance and repairs of the land-based improvements at the Harbor Bay Ferry Terminal, including automobile coverage for all vehicles owned, leased or hired by HBBPA, in an amount not less than Two Million Dollars (\$2,000,000.00) combined single limit, and the operations of HBBPA and HBBPA's employees on certain water-based facilities, namely on the water-based facilities picking up litter, power washing the floating dock and passenger gangway,

and applying non-skid paint to the passenger gangway. HBBPA and City agree that these coverage levels have been based on the understanding that HBBPA's employees will not conduct any repair work on the water-based facilities at the Harbor Bay Ferry Terminal, including the floating dock and the channel markers.

- b. Coverage to be Maintained by Outside Contractors. During the pendency of this Second Amended Terminal Management Agreement, HBBPA shall require as a condition of any contract or work agreement with any person or entity to perform maintenance or repair work at the Harbor Bay Ferry Terminal that the respective contractor shall maintain in full force and effect during the life of the respective contract or work agreement comprehensive general liability insurance with a minimum coverage of One Million Dollars (\$1,000,000.00) for work limited to land-based areas of the Harbor Bay Ferry Terminal and to power-washing the floating dock and passenger gangway and applying non-skid paint to the passenger gangway, including automobile coverage for all vehicles owned, leased or hired by the contractor or subcontractors. No contract work subject to this sub-section shall commence until the required insurance coverage has been obtained by the contractor and verified by HBBPA. HBBPA shall then immediately notify the City, in writing, of the types and amounts of such insurance.
- c. Additional Insureds. HBBPA and insured outside contractors hereunder shall obtain an endorsement naming the City, its City Council, Boards and Commissions, officers and employees and, effective upon a transfer of City's operation of the Alameda Harbor Bay Ferry Service from City to WETA, also WETA, its directors, officers and employees as additional insureds under all insurance coverages, except Workers' Compensation, required by this Second Amended Terminal Management Agreement. City and WETA as additional insureds named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on such policy or any extension thereof. Any other insurance held

by City and/or WETA, including self-insurance, shall not be required to contribute anything toward any loss or expense covered by the insurance provided by such policy.

- d. Subrogation Waiver; Primary Coverage: Each of the foregoing policies shall expressly waive subrogation against the City and, effective upon a transfer of City's operation of the Alameda Harbor Bay Ferry Service from City to WETA, also WETA. An endorsement shall be provided which states that the coverage is Primary Insurance and that no other insurance held by City and/or WETA will be called upon to contribute to this coverage.
- e. Certificates of Insurance: On or before the commencement of any work performed under this Second Amended Terminal Management Agreement, HBBPA shall furnish City and WETA with certificates of insurance showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with this Paragraph 11. Such certificates, which do not limit HBBPA's indemnification of City and WETA set forth in Paragraph 7 hereof, shall also contain substantially the following statement: "Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer afforded the coverage shall provide thirty (30) days' advance notice to the City of Alameda by certified mail addressed Attention: Risk Manager, and to WETA by certified mail addressed Attention: Manager, Operations."
- f. Failure to Secure: If HBBPA and/or outside contractors hereunder at any time during the term hereof should fail to secure or maintain the foregoing insurance, City or WETA shall be permitted to obtain such insurance in the name of or as an agent of the person or entity so failing, whether it be HBBPA and or contractors or subcontractors hereunder as appropriate, and shall be compensated by such person or entity for the costs of the insurance premiums, provided that City or WETA shall make reasonable efforts to secure such insurance at competitive rates.

12. **Permits, Licenses and Certificates.** HBBPA, at its sole expense with respect to City, shall obtain and maintain during the term of this Second Amended Terminal Management Agreement all appropriate permits, licenses and certificates that may be required of it in connection with the performance of services hereunder.
13. **Books and Records.** HBBPA shall maintain complete and accurate records with respect to income and expenses and other such information required by City that relate to the performance of services under this Second Amended Terminal Management Agreement in sufficient detail to permit an evaluation of such services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and filed and stored so as to be readily accessible for retrieval, review, and audit. HBBPA shall provide free and unencumbered access to the authorized representatives of City or its authorized designees to such books and records during regular office hours upon reasonable notice, and hereby gives City the right to examine and audit such books and records, and to make copies thereof or transcripts therefrom as necessary, and to allow inspection of all work, data, back-up information, documents and records relating to the activities and work performed under this Second Amended Terminal Management Agreement. Said records and documents shall be maintained for a period of three (3) years after the end of term or earlier termination of this Second Amended Terminal Management Agreement.
14. **Notices.** Notices given pursuant to this Second Amended Terminal Management Agreement shall be in writing and shall be deemed duly served and given when personally delivered to the party to whom it is directed, or in lieu of such personal service, when deposited in the United States mail, first class, postage prepaid, and addressed as follows:

City: City Manager
City of Alameda City Hall
Santa Clara Avenue at Oak Street
Alameda, California 94501

With a copy to:

City Engineer
City of Alameda – City Hall West
950 West Mall Square, Suite 110
Alameda, CA 94501

HBBPA: Harbor Bay Business Park Association
C/o GS Management Company
5674 Sonoma Drive
Pleasanton, CA 94566

[If to WETA]: San Francisco Bay Area Water Emergency Transportation
Authority (WETA)
Pier 9, Suite 111
San Francisco, CA 94111

Either party may change or update its address for notices by written notice to the other.

15. **Enforceability.** If any term or provision of this Second Amended Terminal Management Agreement, or the application thereof to any person or circumstance shall, to any extent, be in contravention of law or declared void as against public policy, the remainder of this Second Amended Terminal Management Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Second Amended Terminal Management Agreement shall be valid and be enforced to the fullest extent permitted by law.
16. **Entire Agreement; Amendment.** This Second Amended Terminal Management Agreement supersedes the First Amended Terminal Management Agreement and any other prior agreement or verbal or written understanding between

HBBPA and City with respect to the management of the Harbor Bay Ferry Terminal and constitutes, with respect to the management of the Harbor Bay Ferry Terminal, the entire understanding between the parties. The parties acknowledge that HBBPA and City have separate agreements whereby HBBPA manages certain landscaping and lighting maintenance services with respect to public lands within and adjacent to the Harbor Bay Business Park for the Island City Landscaping and Lighting District, including at the Harbor Bay Ferry Terminal, and nothing in this Second Amended Terminal Management Agreement shall affect, or be affected by, the terms and conditions of those agreements. This Second Amended Terminal Management Agreement may not be changed or amended except by an instrument in writing signed by duly authorized representatives of the parties.

17. **Governing Law.** This Second Amended Terminal Management Agreement shall be governed by, and construed in accordance with, the laws of the State of California.
18. **Attorneys' Fees.** In the event either party to this Second Amended Terminal Management Agreement institutes any action, lawsuit or arbitration against the other party arising from this Second Amended Terminal Management Agreement, the prevailing party shall be entitled to receive from the other party all costs or expenses of suit or arbitration, including reasonable attorneys' and expert witness fees in the amount the Court may adjudge to be reasonable.

IN WITNESS WHEREOF, City and HBBPA have executed this SECOND AMENDED AND RESTATED AGREEMENT FOR OPERATION, MAINTENANCE AND MANAGEMENT OF THE HARBOR BAY FERRY TERMINAL on the dates stated below and agree that this Second Amended Terminal Management Agreement is effective as of the day and year first above written.

City: CITY OF ALAMEDA,
A California Municipal Corporation

By: _____ Date: _____
Lisa Goldman
Acting City Manager

RECOMMENDED FOR APPROVAL: _____
Matthew T. Naclerio
Public Works Director

APPROVED AS TO FORM: _____
Donna Mooney
Acting City Attorney

ATTEST: _____
City Clerk

HBBPA: HARBOR BAY BUSINESS PARK ASSOCIATION,
A California Nonprofit Mutual Benefit Corporation

By: _____ Date: _____
Its: President

EXHIBIT "A"

PARCELS COMPRISING THE HARBOR BAY FERRY TERMINAL

PARCEL 1:

Parcel 3, Parcel Map 6012, containing 1.65 +/- acres.

PARCEL 2:

Parcels 1 and 2, Parcel Map 6013, containing 0.1349 +/- acres and 1.043 +/- acres respectively.

PARCEL 3:

Non-exclusive Grant of Easement A, Parcel Map 6013

PARCEL 4:

Non-exclusive Grant of Easement B, Parcel Map 6013

PARCEL 5:

Non-exclusive Grant of Easement C, Parcel Map 6013.

REVISED EXHIBIT B
RULES AND REGULATIONS
FOR
PUBLIC MARINE TERMINAL TRANSPORTATION FACILITY

Harbor Bay Business Park Association (HBBPA) shall observe and implement the following rules and regulations with respect to the Harbor Bay Ferry Terminal:

A. Limitations on Use of the Parking and Passenger Staging Areas:

1. No overnight parking shall be permitted, except in emergencies and for extended commuter layovers with prior notice to HBBPA.
2. No tank trucks or similar fuel delivery trucks shall be permitted.
3. No loitering shall be permitted.
4. No picnicking shall be permitted on or about the Parking and Passenger Staging Areas.
5. Preferred parking spaces for vanpools and carpools shall be provided in coordination with the City of Alameda.
6. The construction, installation, repair, maintenance, remodeling, restoration and replacement of any improvements within the Parking and Passenger Staging Areas shall be subject to the architectural control procedures established in the Declaration of Covenants, Conditions and Restrictions for the Harbor Bay Business Park, Instrument No. 83-050078, recorded on March 29, 1983, as they currently exist or may be subsequently amended; provided, however, that if any maintenance standard thereunder should be in conflict with the provisions of A.9 herein, the provisions of A.9 below shall prevail.
7. Such restrictions and limitations contained in City Council Resolution No. 12014 adopted on September 4, 1990 establishing the City of Alameda's conditions of approval for the construction and operation of the Harbor Bay Ferry Terminal, as amended by the City's Planning Board on November 13, 1995 and on January 25, 1999, or as may be further amended by the City.
8. Such other limitations and regulations in furtherance of and consistent with such use as from time to time may be mutually agreed upon and adopted by the Grantor (HBIA) and Grantee (City) under the Grant of Easement.
9. The Parking and Passenger Staging Areas and the facilities thereon shall be maintained in a first-class manner at least to the level of maintenance established and performed by the HBBPA under contract with the Island City

Landscape and Lighting Maintenance District 84-2 (the "LLMD") for the Shoreline Park along Harbor Bay Parkway in the Harbor Bay Business Park.

B. Limitations on Use of the Docking Facilities:

1. No diving or jumping into the water shall be permitted from the Docking Facilities.
2. No overnight use of Docking Facilities shall be permitted; provided, however, that upon a transfer of operation of the Alameda Harbor Bay Ferry Service from the City to WETA, overnight use of the Docking Facilities may be permitted by WETA.
3. No dumping or discharging garbage, trash, rubbish, debris or other objects from the Docking Facilities into the water shall be permitted.
4. No materials, including petroleum products, flammable goods or hardware, shall be stored or kept on the Docking Facilities. No fueling, maintenance or repair of any boat shall be permitted from, on or about the Docking Facilities.
5. No fishing shall be permitted from the Docking Facilities.
6. No picnicking shall be permitted on or about the Docking Facilities.
7. Such restrictions and limitations contained in City Council Resolution No. 12014 adopted on September 4, 1990 establishing the City of Alameda's conditions of approval for the construction and operation of the Harbor Bay Ferry Terminal, as amended by the City's Planning Board on November 13, 1995 and on January 25, 1999, or as may be further amended by the City.
8. Such other limitations and regulations in furtherance of and consistent with such use as from time to time may be mutually agreed upon and adopted by the Grantor (HBIA) and Grantee (City) under the Grant of Easement.

NOTE: The parties acknowledge and agree that in anticipation of the transfer of certain ferry service operations from the City to WETA, item B.6 (Scheduling of passenger vessel docking), item B.7 (Vessel operators required to hold current Certificates of Public Convenience and Necessity issued by the California Public Utilities Commission), item B.9 (Construction, installation, repair, maintenance, remodeling, restoration and replacement of the Docking Facilities shall be subject to the architectural control procedures of the Harbor Bay Business Park), item 11 (Standard of maintenance for Docking Facilities is level of maintenance of lagoon edge circulation corridors), section C (Docking Fees), and section D (Use of Access Channel) in Exhibit "B" to the First Amended Terminal Management Agreement have been deleted in Revised Exhibit "B" to the Second Amended Terminal Management Agreement, and item B.2 (No overnight use of Docking Facilities) has been modified to reflect the anticipated transfer of authority over use of the water-based facilities to WETA.

REVISED EXHIBIT "C"

SCOPE AND SPECIFICATIONS OF WORK

Harbor Bay Business Park Association (HBBPA) shall provide the following maintenance and property management services with respect to the Harbor Bay Ferry Terminal pursuant to this Second Amended Terminal Management Agreement according to the following conditions and standards:

1. Maintenance and repair of the terminal shelter building, bike racks, and trash containers as needed; daily clean-up of litter, clean-up and repair of damage to land-based facilities from vandalism as needed; painting of land-based improvements as needed, using water-based or latex paints on a minimum of 60% of all painted surfaces at the terminal shelter.
2. Maintenance and repair of the parking lot and parking lot equipment as needed, including, but not limited to: monthly sweeping, or more often if warranted by build-up of sand or litter or as required by the City.
3. Maintenance and repair of all lighting on or associated with the land-based facilities at the Harbor Bay Ferry Terminal as needed.
4. Maintenance and repair of all signage on or associated with the land-based facilities at the Harbor Bay Ferry Terminal as needed.
5. Monitoring pollutant spills in the parking lot: remedial responses as needed, including filing reports on any incident and the response with the City.
6. Security patrols: patrol through parking lot past the terminal shelter as needed, but not less than one time per eight hour shift.
7. Limited maintenance services on the water-based facilities at the Harbor Bay Ferry Terminal: power washing the passenger ramp and floating dock on a weekly basis, and applying non-skid paint to the passenger gangway once per year. HBBPA's obligations to perform such limited maintenance services on the water-based facilities hereunder may be terminated by delivery of written notification of such termination from the City.
8. Monitoring and payment of bills for utilities used by HBBPA or its sub-contractors in the maintenance and repair of the Harbor Bay Ferry Terminal as provided herein.

NOTE: The parties acknowledge and agree that in anticipation of the transfer of certain ferry service operations from the City to WETA, item 2 (Maintenance of access channel) and portions of item 1 (Maintenance and repair of dock, gangway and pier) in Exhibit "C" to the First Amended Terminal Management Agreement have been deleted in Revised Exhibit "C" to the Second Amended Terminal Management Agreement, and other items have been revised to remove or limit HBBPA's obligations for maintenance and repair of the water-based facilities at the Harbor Bay Ferry Terminal to reflect the anticipated transfer of responsibility for maintenance and repair of the water-based facilities to WETA.

REVISED EXHIBIT "D"

RESPONSIBILITIES OF HBBPA UNDER CITY PERMIT APPROVALS

In City Council Resolution No. 12014 adopted September 5, 1990, the original "Project Applicant" was Harbor Bay Isle Associates (HBIA). Many of the conditions related to the original construction of the water-based facilities and the land-based facilities are not pertinent to this Second Amended Terminal Management Agreement. Some of the conditions by their clear terms and context are reasonably assumed to be more appropriately fulfilled by the current operator of the Alameda Harbor Bay Ferry Service and are not the responsibility of HBBPA as the manager of the Harbor Bay Ferry Terminal. Pursuant to this Second Amended Terminal Management Agreement, HBBPA as manager of the Harbor Bay Ferry Terminal is responsible for implementation of the following conditions in City Council Resolution No. 12014:

1. Condition No. 7: (Latex Paints): For post-construction maintenance painting, a minimum of 60 percent of all painted surfaces shall be painted with water-based or latex paints and finishes to reduce carbon emissions. This condition shall not apply to coatings required for the docking facilities.

2. Condition No. 8: (Minimize Direct Run-Off into Bay): HBBPA's property management practices shall include regular sweeping of the ferry terminal parking lot and regular surveillance and monitoring of the parking lot to insure that there will be no emptying of motor fuel or oil onto the parking lot surface. Tank trucks or similar fuel delivery trucks will be prohibited from entering the ferry terminal parking lot.

3. Condition No. 29: (Ferry Terminal Parking): HBBPA will file annual reports with the City that include quarterly counts of use of regular parking spaces, use of the designated van pool spaces, and the bike parking spaces.

4. Condition No. 31: (Van Pool Parking): HBBPA's annual reports to the City will include a review of the demand for van pool parking and the steps taken to accommodate such demand.

5. Requirements for Docking License Agreement. As ferry terminal manager, HBBPA shall require as terms and conditions of the docking license agreement with the Operator of the Alameda Harbor Bay Ferry Service that the Operator shall comply with the following conditions and with the mitigation monitoring requirements applicable to the vessel operator in City Council Resolution No. 12014 as revised by the City's Planning Board on November 13, 1995 by submitting documentation to HBBPA every quarter regarding its compliance with the following conditions:

- (a) Condition No. 18: Vessel Speeds Near Shore
- (b) Condition No. 19: Distance from Eelgrass Beds
- (c) Condition No. 20: Propeller Thrust Near Shore
- (d) Condition No. 21: Off-Site Fueling and Repairs

- (e) Condition No. 23: Noise of Vessel Operations
- (f) Condition No. 24: Bilge Wastes
- (g) Condition No. 26: Public Transit Inter-Modal Transfers
- (h) Condition No. 32: Patron Surveys Required by City
- (i) Condition No. 34: Contingency Operating Plan for Safety and Driving Conditions unless such conditions are waived or terminated by the City.

HBBPA will include this documentation in its annual terminal management reports to the City, unless such reporting requirements are waived or terminated by the City.

However, upon the anticipated transfer of the Alameda Harbor Bay Ferry Service from the City to WETA, the Operator of the Alameda Harbor Bay Ferry Service will no longer be required to submit documentation to HBBPA every quarter regarding the Operator's compliance with the above-listed conditions, and HBBPA will no longer be required to include such documentation in its annual terminal management reports to the City.

NOTE: The parties acknowledge and agree that in anticipation of the transfer of certain ferry service operations from the City to WETA, item 3 (Condition No. 26 – Public Transit), item 4 (Condition No. 28 - Either Charge for Parking or Free Transit), Condition No. 30 (Marketing Vanpools and Carpools), and Condition No. 34 (Contingency Operating Plan for Safety and Driving Conditions) in the detailed provisions for terms and conditions of the Docking License Agreement applicable to the Operator of the Alameda Harbor Bay Ferry Service stated in Exhibit "D" to the First Amended Terminal Management Agreement have been deleted in Revised Exhibit "D" to the Second Amended Terminal Management Agreement, and other items have been revised to change HBBPA's reporting obligations to the City.

REVISED EXHIBIT “E”

RESPONSIBILITIES OF HBBPA UNDER LICENSES AND PERMITS FROM OUTSIDE AGENCIES

I. BCDC PERMIT – Removal of Marine Facilities.

Sections II.E. and II.F.5. of the BCDC Permit contain conditions regarding the removal of the Marine Facilities if passenger ferry service is discontinued at the Harbor Bay Ferry Terminal. If required, such removal of the Marine Facilities shall be an expense item of the operating budget of the Harbor Bay Ferry Terminal funded out of the LLMD and the TIF and managed on behalf of the City by HBBPA, except that if HBIA or its successor or assign (other than the City) should exercise its option to terminate its Grant of Easement over the Harbor Bay Ferry Terminal property, then the costs for the removal of the Marine Facilities shall be borne by HBIA or its successor or assign (other than the City) rather than be an expense item of the operating budget of the Harbor Bay Ferry Terminal.

II. U.S. ARMY CORPS PERMIT – Removal of Marine Facilities.

Special Condition No. 3 of the Corps Permit provides that if monitoring shows that there are significant negative impacts to the environment as a result of the ferry operations, the Corps may require the removal of the floating dock. If such a removal requirement should occur, the costs for the removal of the floating dock and any related Marine Facilities shall be an expense item of the operating budget of the Harbor Bay Ferry Terminal funded out of the LLMD and the TIF and managed on behalf of the City by HBBPA, except that if HBIA or its successor or assign (other than the City) should exercise its option to terminate its Grant of Easement over the Harbor Bay Ferry Terminal property, then the costs for the removal of the floating dock and any related Marine Facilities shall be borne by HBIA or its successor or assign (other than the City) rather than be an expense item of the operating budget of the Harbor Bay Ferry Terminal.

NOTE: The parties acknowledge and agree that in anticipation of the transfer of certain ferry service operations from the City to WETA, certain sections of Exhibit “E” (Responsibilities of HBBPA Under Licenses and Agreements From Outside Agencies), namely all of Section I (Port of Oakland License Agreement), Paragraph II.A. (Maintenance of Marine Facilities under Section II - BCDC Permit), all of Section III (Coast Guard Permit for Navigational Marker Buoys), and Paragraph IV.A. (Maintenance and Repair under Section IV – U.S. Army Corps Permit) have been deleted in Revised Exhibit “E” to the Second Amended Terminal Management Agreement to reflect the anticipated transfer of authority over use of and responsibility for maintenance and repair of the water-based facilities to WETA.